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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 JOHN GRIFFIN HEADRICK,

9 Petitioner,

10 v.

11 RICHARD R. SCOTT,

12 Respondent.

CASE NO. C19-5725 BHS

ORDER DECLINING TO ADOPT
REPORT & RECOMMENDATION
AND RE-REFERRING CASE

13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable J. Richard Creatura, United States Magistrate Judge, Dkt. 37, and
15 Petitioner John Headrick’s objections to the R&R, Dkt. 38.

16 Petitioner, proceeding pro se, previously a pretrial detainee, initially filed a
17 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner then consented
18 to conversion of his § 2241 petition into a petition filed under 28 U.S.C. § 2254 after he
19 was convicted. Dkts. 29, 30. The Court granted petitioner leave to file an amended
20 § 2254 petition to cure the deficiencies identified therein. Dkts. 31, 33, 34, 35, 36.
21 Petitioner was advised that if he failed to file an amended § 2254 petition on or before
22 February 26, 2021, the Court would recommend dismissal of this action. Dkt. 36. The

1 Court did not receive an amended petition, and thus Judge Creatura recommended that
2 the petition be dismissed without prejudice. Dkt. 37.

3 Petitioner objects to the R&R's recommendation that his petition be dismissed,
4 asserting that his wife mailed the amended petition to the Court at the end of December
5 2020. Dkt. 38 at 2–3. He thus requests that the Court decline to adopt the R&R and allow
6 him 60 days to submit his amended petition. *Id.* at 3.

7 The district judge must determine de novo any part of the magistrate judge's
8 disposition that has been properly objected to. The district judge may accept, reject, or
9 modify the recommended disposition; receive further evidence; or return the matter to the
10 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

11 As Judge Creatura recommends that the petition be dismissed without prejudice, it
12 is not inconsistent with the R&R to allow Petitioner an extension to file his amended
13 petition. Therefore, the Court having considered the R&R, Petitioner's objections, and
14 the remaining record, does hereby find and order as follows:

- 15 (1) The Court **DECLINES** to adopt the R&R;
16 (2) Petitioner shall file his amended petition on or before July 2, 2021;
17 (3) This matter is re-referred to Judge Creatura for further consideration; and
18 (4) The Clerk shall mail copies of this order to Petitioner.

19 Dated this 5th day of May, 2021.

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22 BENJAMIN H. SETTLE
United States District Judge